IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.: 180 of 2006

DATE OF DECISION : May 01, 2007

Commissioner of Central Excise Commissionerate, Rohtak

..... Appellant

VERSUS

M/s J.R Fabrics (P) Ltd., 51, HSIDC, Industrial Area, Kundli.

..... Respondent

CORAM : HON'BLE MR. JUSTICE M.M. KUMAR.
HON'BLE MR. JUSTICE RAJESH BINDAL.

Present: Mrs. Daya Chaudhary, Senior Advocate
with Ms. Kamla Malik,Advocate
for the appellant.

Mr. Naveen Mullick, Advocate
for the respondent.

RAJESH BINDAL, J.

The revenue has filed the present appeal under Section 35 (G) of the Central Excise Act, 1944 (for short, the Act), raising the following substantial question of law, arising out of order dated 18.5.06 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short, the Tribunal) in Excise Appeal No. 943 of 2006:-

> "Whether CESTAT is correct in holding the penalty equivalent to disputed duty amount under Section 11AC of Central Excise Act, 1944, is not leviable where disputed duty amount is deposited prior to issue of show cause notice"

In the present case, the Tribunal has set aside the imposition of penalty levied under Section 11AC of the Act by following its earlier order passed in CCE, Delhi-III Vs. Machino Montell 2004 (62) RLT 709 (CESTAT-LB), while holding that if the duty had been paid before the issuance of show cause notice, no penalty can be imposed.

This view has been dis-approved by this Court in CEA No. 13 of 2005, Commissioner of Central Excise Delhi-III Vs M/s Machino Montell India Ltd. and another, decided on 25.07.2006 and it has been held that mere deposit of duty prior to issuance of show cause notice will not necessarily negate the imposition of penalty Section 11AC of the Act. Question would still remain as to whether non-payment of duty at the relevant time was on account of fraud, collusion or willful mis-statement or suppression of facts or contravention of the provisions of the Act or the Rules with intend to evade payment of duty as laid down under Section 11AC of the Act. The legal issue raised in the appeal having already been decided by this Court and the issue of mens-rea having not been specifically dealt with by the Tribunal, in our view the matter will require reconsideration by the Tribunal.

Accordingly, we allow this appeal, set aside the order of the Tribunal and remand the matter back to the Tribunal for a fresh decision in accordance of law.

Parties are directed to appear before the Tribunal for further proceedings on July 25, 2007.

(RAJESH BINDAL)
JUDGE

May 01, 2007
Amit

(M.M. KUMAR)
JUDGE